

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2475 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MAHESH PRAKASH

Versus

COMMANDANT

-----  
Appearance:

1. Special Civil Application No. 2475 of 1990  
MR MN POPAT FOR MRS MC THAKKER for Petitioner  
MR DK NAKRANI FOR MR SS SHAH FOR RAILWAYS2
- 

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:8/12/2000

C.A.V. JUDGEMENT

#. The petitioner is an officer in the Railway Protection Force and at the relevant time was posted as Inspector at Rajkot. A disciplinary action was taken

against him by issuance of a charge sheet on 11-1-1984.  
The following charges were framed against him:

- "1. for disobedience of orders and act of defiance  
in that he failed to attend DRM Inspection of  
Hapa and Section HXP-RJT on 7-12-1983 even though  
he was duty bound to do so.
2. He did not proceed to OKO by 402 Dn of 7-12-83  
to attend the meeting of CCS with MPs to be held  
on 8-12-83 even though he was informed to attend  
along with SIPF HXP on 7-12-1983 without any  
sufficient reason."

#. The allegations in brief against the petitioner were that despite instructions received by him he did not join the Inspection party to proceed to new JAM sessions. The Inspection party returned but even at that time the petitioner failed to attend and join the Inspection party. This was a case of intention of dereliction of duty and a recalcitrant attitude amounting to defiance of the instruction received by him by message dated 7-12-1983 with clear instructions to him to join the meeting convened by CCS and MPs and MLAs at 15.00 hours on 8-12-1983. The defence of the petitioner was that after availing 45 days leave he resumed duties on 7-12-1983 at 11.25 hours. He received the message at about 11.30 hours. He, therefore, left the office at 11.50 hours to join the Inspection party. When he found that the party had already left by road, he returned to HXP post at 13.40 hours and left for meals. When he reached his residence, he found that his wife was seriously sick, therefore, he immediately arranged for her treatment with Shri Gupta, ADMO/HXP. By 15.50 hours when reached back to the office, he received no message regarding Inspection party and that was the reason that he could not join the Inspection party.

#. The Enquiry Officer in the oral testimony of the witnesses examined by him on his own came to the conclusion that the wife of the petitioner was actually sick and he was held up at his residence to attend to her. The Enquiry Officer, therefore, held that the petitioner could not be held guilty of the charges levelled against him. Upon considering the report of the Enquiry Officer and the papers submitted to the Disciplinary Authority, the Disciplinary Authority disagreed with the findings of the Enquiry Officer and therefore, the former recorded findings and reasons for his disagreement, which were duly served on the petitioner to afford him an opportunity to show cause against the reasons of disagreement and the proposed

penalty of stoppage of increments for three years with cumulative effect. On the evidence on record, the Disciplinary Authority came to the conclusion that on resumption of duty it was most unlikely that the petitioner was unable to locate the Inspection party with a gathering of about 90 railway staff at work within the full view from the station yard. He rejected the defence of the petitioner that he made search for the Inspection party but could not locate it. So far as the plea of illness of his wife is concerned, the Disciplinary Authority disbelieved his case. The Railway Doctor never stated in his statement that he went to the residence of the petitioner on call between 13.50 to 15.50 hours and the Doctor merely stated that the wife of the petitioner was treated by him after 7-12-1983. The stand of the petitioner that the Doctor visited his residence before 16.00 hours was found to be false.

#. The Disciplinary Authority also held that the second charge was proved. Admittedly the message to join the Inspection party was received by him at 20.20 hours on 7-12-1983. There were about 30 minutes time available to him to join the Inspection party. If he was sincere it was not difficult for him to cover a distance of six kilometers. He avoided to join the Inspection party. This was an act of treason, recalcitrant attitude and dereliction of duty. Having thus recording the conclusion that both the charges were proved, the Disciplinary Authority imposed on the petitioner punishment of stopping of his increments for three years with cumulative effect. Aggrieved by the order of the Disciplinary Authority dated 31-1-1986 (Annexure D), the petitioner preferred an Appeal. The Appellate Authority by order dated 6-8-1986 (Annexure E) upheld the action of the disciplinary authority but interfered in the quantum of punishment. The penalty imposed by the Disciplinary Authority was reduced to withholding of increment for the period of one year instead of three years with cumulative effect.

#. Learned counsel appearing for the petitioner in assailing the disciplinary proceedings and the impugned orders of punishment raised several contentions. Firstly, it was urged that the petitioner was denied a reasonable opportunity of defence. The Disciplinary Authority had no justification to differ with the findings of the Enquiry Officer and the petitioner was never heard on the question of disagreement recorded by the Disciplinary Authority. The above ground urged is not borne out from the record. In the impugned order of the Disciplinary Authority dated 31-1-1986 (Annexure D)

in the opening part after statement of charges, there is a clear mention that the findings and reasonings of disagreement recorded by the Disciplinary Authority were served on the petitioner with a show cause notice proposing penalty of stoppage of increment for three years with cumulative effect.

#. The second ground urged was that the Disciplinary Authority was biased against the petitioner as the petitioner had taken some action against one Mr. Saini, whom the Disciplinary Authority wanted to shield. The ground urged is merely an allegation which is not substantiated by any record. No such allegation was made during the course of the enquiry and when such allegation of bias was made in the Appeal, the Appellate Authority gave no importance to the same as the subordinate staff can always have some grievance or grudge against the superior officer.

#. It was next urged on behalf of the petitioner that the Disciplinary Authority, i.e., Commandant, RPF, Rajkot was not competent to impose punishment on the petitioner as he was promoted to the post of Inspector by the order issued by the Chief Security Officer. The above ground of incompetence of the Disciplinary Authority to impose punishment is also baseless. The petitioner has been imposed with punishment not of dismissal, termination or reduction in rank. The provisions of Article 311 are, therefore, not attracted. The disciplinary proceedings are regulated by Chapter XXII of the Railway Protection Force Rules, 1987 framed under the Railway Protection Force Act, 1957. The Rules 25 and 133 proceed for preparation of Schedule. Schedule III contains the names of authorised disciplinary authorities and their powers. Entries at Sr. No. 6 and 7 of Schedule III of the Rules clearly show that the Commanding Officer who is in the Office of the Commandant, Railway Protection Force is empowered to impose punishment of withholding increments cumulatively or non-cumulatively, on all enrolled members of the force.

#. The last ground urged is that the punishment imposed is harsh and disproportionate to the charges held to have been proved. The Disciplinary Authority had imposed punishment of withholding increments for three years with cumulative effect. Looking to the nature of the misconduct, the Appellate Authority has already reduced the punishment to withholding of increment for one year with cumulative effect. There is no ground made out to further interfere in the quantum of punishment.

#. Before concluding the judgment, it may be mentioned that in the course of argument, learned counsel made some attempt to assail the finding of the Disciplinary Authority on facts. But I have not deliberately dealt with that aspect of the matter as I do not find any perversity in appreciation of the evidence led and the findings reached by the Disciplinary Authority after disagreeing with the reasonings and conclusions of the Enquiry Officer. This Court in exercise of powers under Article 226 of judicial review is not expected to act like an Appellate Authority and reappreciate the whole evidence to come to a conclusion of its own. (See the observations (paragraph 16) of the Supreme Court in High Court of Judicature at Bombay Through its Registrar v. Shashikant S. Patil and Another (2000) 1 SCC 416).

Consequently, I find no merit in this petition. It is accordingly dismissed, but in the circumstances, I make no order as to costs. Rule is discharged.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]